

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Larry Baker	:	
	:	Examiner: Not yet assigned
	:	
Serial No.: 10/526,942	:	Group Art Unit: Unknown
	:	
Filed: March 8, 2005	:	Attorney Docket No.: 718452.9
	:	
For: URINARY TRANSFER SYSTEM AND ASSOCIATED METHOD OF USE	:	Customer No.: 027128
	:	
	:	Confirmation No.: 7563

RENEWED PETITION UNDER 37 C.F.R. SECTION 1.47 (a)

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, Virginia 22313-1450

In response to the Decision on Applicants' Renewed Petition Under 37 C.F.R. Section 1.47 (a) dated March 9, 2006, a copy of which is enclosed, and in light of still further discussions with attorney-advisor Anthony Smith, Applicants respectfully request further reconsideration of the Renewed Petition for the following reasons.

In accordance with the Decision dated March 9, 2006, Applicants are submitting herewith a Declaration for the above-identified U.S. Patent Application Serial No. 10/526,942 which has now been executed by the Legal Representative of the Estate of Larry Baker, James D. Baker. A clean copy of the Declaration as well as a copy attached hereto as Exhibit A are enclosed herewith. This new Declaration was executed on May 4, 2006 and specifically states that Mr. James D. Baker is the legal representative of the Estate of Larry R. Baker and the heirs; it identifies the citizenship, residence and address of the legal representative; and it identifies the

Application of: Larry Baker
Serial No.: 10/526,942
Renewed Petition Under 37 C.F.R. Section 1.47(a)

last known address of the deceased inventor, Larry R. Baker. The Legal Representative of Mr. Baker's estate is James D. Baker having an address at 105 Walnut, P.O. Box 39, Pevely, Missouri 63070. The enclosed Declaration of Mr. Baker was signed on May 4, 2006.

As further evidence of the transfer of all interest from the deceased inventor Larry Baker to Urinary Transfer Systems Group, LLC, Applicants have already provided a Settlement Agreement (Exhibit B of previous response) reached between the Assignee Urinary Transfer Systems Group, LLC and James D. Baker as Personal Representative of the Estate of Larry Baker. Pursuant to Paragraph 2 of the Settlement Agreement, the Bakers transferred and/or disclaimed all interest in Urinary Transfer Systems Group, LLC ("UTS") and its Intellectual Property including but not limited to the patents pending and trademarks registered at the time of execution of the Settlement Agreement. Applicants have likewise already provided an assignment document (Exhibit C of previous response) executed by James D. Baker, Personal Representative of the Estate of Larry Baker on April 14, 2005 wherein the 50% interest of Mr. Baker in and to the invention identified as U.S. Provisional Patent Application No. 60/481,785 filed on December 12, 2003 and the International PCT Patent Application Serial No. PCT/US04/040409 filed December 2, 2004 were transferred to Urinary Transfer Systems Group, LLC. Under Missouri law, a personal representative is the legal representative of the estate of a Missouri resident.

The enclosed Declaration now meets all of the requirements set forth in the Decision dated March 9, 2006.

All of the above-identified documents also evidence the fact that the Personal Representative/Legal Representative of the Estate of Mr. Baker not only initially signed the Declaration associated with the above-identified application, but the Personal

Application of: Larry [redacted]ker
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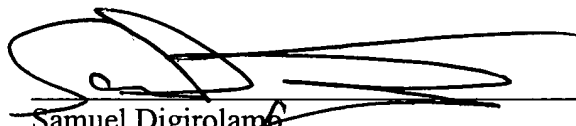
Representative/Legal Representative also assigned all rights, title and interests in and to the 50% interest held by the deceased inventor in association with the present invention.

Reconsideration on the merits of the previously filed Renewed Petition referenced above is therefore respectfully requested. This response is being filed within the third month following the March 9, 2006 mailing date of the Decision and includes payment of the appropriate extension fee, as noted in the accompanying Petition For Extension of Time Under 37 CFR 1.136(a)

It is therefore respectfully requested that this Renewed Petition be granted. If a telephone conference would facilitate resolving any issue related to this Renewed Petition, the undersigned attorney would appreciate and welcome such telephone conference. Contact information is provided below.

Respectfully submitted,

Date: 10 MAY 06



Samuel Digirolamo
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sdigirolamo@blackwellsanders.com
ATTORNEYS FOR APPLICANT

DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)	Attorney Docket Number	718452.9
	First Named Inventor	Baker, Larry
	<i>COMPLETE IF KNOWN</i>	
	Application Number	10/526,942
	Filing Date	March 8, 2005
	Art Unit	Not yet known
<input type="checkbox"/> Declaration Submitted With Initial Filing <input checked="" type="checkbox"/> Declaration Submitted after Initial Filing (surcharge (37 CFR 1.16 (e)) required)		Examiner Name Not yet known

I hereby declare that:

Each inventor's residence, mailing address, and citizenship are as stated below next to their name.

I believe the inventor(s) named below to be the original and first inventor(s) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

URINARY TRANSFER SYSTEM AND ASSOCIATED METHOD OF USE

(Title of the Invention)

the specification of which

☐ is attached hereto

OR

☒ was filed on (MM/DD/YYYY) **03/08/05** as United States Application Number or PCT International

Application Number **10/526,942** and was amended on (MM/DD/YYYY) **09/16/05** (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment specifically referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including for continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below, by checking the box, any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed.

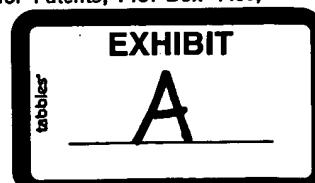
Prior Foreign Application Number(s)	Country	Foreign Filing Date (MM/DD/YYYY)	Priority Not Claimed	Certified Copy Attached?	
				YES	NO
PCT/US04/040409	WO	12/02/2004	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

☐ Additional foreign application numbers are listed on a supplemental priority data sheet PTO/SB/02/B attached hereto.

[Page 1 of 2]

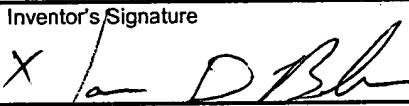
This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



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DECLARATION – Utility or Design Patent Application

Direct all correspondence to:	<input checked="" type="checkbox"/> The address associated with Customer Number:	27128	OR	<input checked="" type="checkbox"/> Correspondence address below
Name Samuel Digirolamo				
Address: Blackwell Sanders Peper Martin LLP 720 Olive Street, Suite 2400				
City St. Louis,		State MO	ZIP 63101	
Country US	Telephone 314-345-6225		Fax 314-345-6060	
WARNING:				
<p>Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.</p> <p>I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.</p>				
NAME OF SOLE OR FIRST INVENTOR:		<input type="checkbox"/> A petition has been filed for this unsigned inventor		
Given Name (first and middle [if any]) Larry R.		Family Name Or Surname Baker (DECEASED)		
Inventor's Signature 		James D. Baker, Legal Representative of the Estate of Larry R. Baker and Heirs 105 Walnut, P.O. Box 39 Pevely, Missouri 63070		Date 5/4/06
Residence: City St. Louis 1486 Ville Rosa (LAST KNOWN ADDRESS OF DECEASED) St. Louis, MO 63042		State MO	Country US	Citizenship US
Mailing Address OF LEGAL REPRESENTATIVE 105 Walnut, P.O. Box 39				
City Pevely,		State MO	ZIP 63070	Country US
<input type="checkbox"/> Additional inventors or a legal representative are being named on the _____ supplemental sheet(s) PTO/SB/02A or 02LR attached hereto.				

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DECLARATION**ADDITIONAL INVENTOR(S)
Supplemental Sheet**

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Name of Additional Joint Inventor, if any:		<input checked="" type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Warren L.		Spielman	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
St. Louis	MO	US	US
7301 Overbrook Drive			
Mailing Address			
City	State	ZIP	Country
St. Louis	MO	63121	US
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	ZIP	Country
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle [if any])		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
Mailing Address			
City	State	ZIP	Country

This collection of information is required by 35 U.S.C. 115 and 37 CFR 1.63. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 21 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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09 MAR 2006

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Kevin M. Kercher
Blackwell Sanders Peper Martin LLP
720 Olive Street, 24th Floor
St. Louis, Missouri 63101

In re Application of
BAKER, et al.
Application No.: 10/526,942
PCT No.: PCT/US04/40409
Int. Filing Date: 02 December 2004
Priority Date: 12 December 2003
Attorney Docket No.: 718452.9
For: URINARY TRANSFER SYSTEM AND
ASSOCIATED METHOD OF USE

DECISION ON PETITION
UNDER 37 CFR 1.47(a)

This decision is in response to applicants' "Renewed Petition under 37 C.F.R. Section 1.47(b)" filed 12 January 2006. Additionally, the declaration submitted on 12 January 2006 will be considered pursuant to 37 CFR 1.42.

Applicants' previous petition under 37 CFR 1.47(b) was dismissed because the petitioner did not provide a declaration in compliance with 37 CFR 1.47(a)-(b). Since the filing of the petition under 37 CFR 1.47(b), the representative of the deceased inventor has executed the declaration and the response to the Decision submitted 12 January 2006 will be treated as a petition under 37 CFR 1.47(a).

BACKGROUND

On 02 December 2004, applicants filed international application PCT/US04/40409, which claimed a priority date of 12 December 2003. The international application listed Warren Spielman as an applicant/inventor and Larry R. Baker as a deceased inventor. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 07 July 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States is to expire 30 months from the priority date, 12 June 2006.

On 08 March 2005, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and a preliminary amendment.

On 16 September 2005, applicants filed a "Petition under 37 C.F.R. Section 1.47(b) by Entity Having Proprietary Interest to File Application on Behalf of Inventor Who Refuses to Sign Declaration."

On 25 October 2005, applicants filed "Letter for Express Request to Begin National Phase Proceedings."

In a "Decision on Petition" dated 13 December 2005, applicants' petition under 37 CFR 1.47(b) was dismissed without prejudice.

On 12 January 2006, applicants filed "Renewed Petition under 37 CFR Section 1.47(b)" which is being treated as a Petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. The 37 CFR 1.47(a) applicant has satisfied the requirements of items (1); (2); and (3). However, item (4) has not been satisfied.

Regarding item (4) above, an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor has been submitted with the present petition, however, the declaration is not in compliance with 37 CFR 1.42 and 1.497(b)(2).

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Section 409.01(a) of the Manual of Patent Examining Procedure (MPEP) states that the application can also be executed by "all of the heirs" of the deceased inventor, where no legal representative has been appointed.

The declaration filed 12 January 2006 is executed by the personal representative (James D. Baker) on behalf of deceased inventor, Larry R. Baker. However, the declaration does not state that James D. Baker is the "legal" representatives or are all of the heirs of the deceased inventor. Further, the declaration does not satisfy the requirements under 37 CFR 1.497(b)(2).

37 CFR 1.497(b)(2) states the following:

(2) If the person making the oath or declaration or any supplemental

oath or declaration is not the inventor (§§ 1.42, 1.43, or § 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to revised 37 CFR 1.497(b)(2), in addition to the citizenship and former residence and post office address of the deceased inventor referenced under 37 CFR 1.497(a)(3) and 37 CFR 1.63, the declaration must also provide name, residence, citizenship, and post office address for the legal representative. The declaration filed on 12 January 2006 does not include the last known post office address for the deceased inventor. Additionally, the declaration does not name the person executing the declaration on behalf of the deceased inventor. Accordingly, the declaration is not in compliance with 37 CFR 1.497(b)(2).

For the reasons stated above, it would not be appropriate to accept the application without the signature of Warren Spielman under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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